FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
WRIT PETITION NO. 1416 OF 1995.

Datta A. Savant & anr. ..Petitioners.

vs.

The Commissioner of Income Tax,
Nasik & ors. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. :	:	Court's or Judge's orders

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Shri V.H. Patil with Ms. Aasifa Khan i/b K.B. Bhujle and A.K. Jasani for the petitioner.

Shri Parag Vyas for the respondents.

CORAM: V.C.DAGA AND J.P.DEVADHAR,JJ.
DATED: 4.10.2005.

P.C.:

. In this petition, petitioners have challenged the orders passed by the C.I.T. under section 264 of the Income Tax Act, rejecting the applications made by the petitioners against the penalty orders passed under section 271(1)a); 271(1)(c) and 273 (2)(b) of the Act. The petitioners have also challenged the order passed by the Commissioner of Income Tax dated 26th July 1994, declining to entertain the application made under section 273A of the Act for a waiver of penalties/interest under the provisions of the Income-tax Act for A.Y.1987-88.

2. On perusal of the order passed by the C.I.T. under section 264 of the Act against the penalty levied under section 271(1)(c) of the Act, it is seen that the application has been rejected on the ground that there was delay of 32 months in filing the return of income and that the assessee was forced to file the return of income. It is the case of the petitioner that the return was filed on 11.2.1991 voluntarily in the status of unregistered firm and later on the return was filed on 28.2.1991 in the status of A.O.P. on the advice of the Assessing Officer. This aspect has not been considered in the impugned order. Similarly, the other two applications have been rejected mainly because the gold ornaments have been ultimately accepted by the partners on the ground that the assessee cannot produce any evidence. Mere addition to income, at the instance of the assessee would not warrant the finding of concealment. Similarly, the rejection of application for waiver of penalty/interest under section 273A on the ground that the return has not been filed voluntarily

does not appear to be correct.

3. In the result, we are of the opinion that the interest of justice would be served by quashing the impugned orders and directing the Commissioner of Income Tax to pass fresh orders in accordance with law. Accordingly, orders impugned in the petition are quashed and set aside. The matter is remitted back to the C.I.T. to decide the aforesaid application in accordance with law.

4. Since the matter pertains to A.Y. 1987-88, we hope that the C.I.T. will dispose of the applications as expeditiously as possible.

. The petition is allowed in terms of prayer (a) of the petition with no order as to costs.